

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
SCOTT PAPER COMPANY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB Nos. 79-15 and 79-95

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, an appeal from Department of Ecology's disapproval of applications for tax credit and exemption under chapter 82.34 RCW, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana, Members, convened at Tacoma, Washington on June 25 and 26, 1979. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its attorney, John T. Piper. Respondent appeared by Jeffrey D. Goltz, Assistant Attorney General. Reporter

1 Diane Jenkins recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined.
3 From testimony heard and exhibits examined, the Pollution Control
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Appellant, Scott Paper Company, (Scott) operates a pulp mill at
8 Everett, Washington. This is an ammonia-base acid sulfite mill. The
9 acid sulfite process involves "cooking" of wood with chemicals under
10 controlled conditions of temperature pressure and time. This cooking
11 is done in an acid solution in large vessels called "digesters".
12 The primary chemicals employed consist of sulfurous acid together
13 with a base chemical, ammonia. This chemical cooking process frees
14 the cellulose fibers, which become the pulp, from the lignin. The
15 process results in a solution generally referred to as "sulfite waste
16 liquor" (SWL). Prior to the imposition of pollution control
17 requirements, the SWL removed from the pulp was discharged into
18 the receiving waters of the state.

19 On March 31, 1970, the Department of Ecology's (DOE) predecessor
20 agency issued Waste Discharge Permit No. T-3344 regulating SWL
21 discharge into the receiving waters from Scott's Everett pulp mill.
22 That permit requires removal of 80% of SWL from total mill wastes or
23 limitation of SWL discharges to 5,500,000 pounds per day (based
24 on 10 per cent solids by weight) by July 31, 1978. This is to be
25 accomplished in two phases, labeled Phase I and Phase II.

26 II

27 In July, 1970, Scott applied to the Department of Revenue for tax

credit and exemption for its Phase I and Phase II pollution control facilities. These applications were assigned numbers 670 and 671.

Attached to applications 670 and 671 were the "Final Plans and Specifications" for the pollution control facilities required by DOE's waste discharge permit, T-3344. After leaving the mill, SWL (called "weak" at this point) is to enter storage tanks, then move through a system of evaporators (after which the SWL is called "heavy" or red liquor) then to other storage tanks (130,000 gallon total capacity) and then to a boiler known as No. 10 recovery boiler, where the SWL is burned as fuel to produce steam for the mill. Although not detailed enough to constitute construction drawings, these "Final Plans and Specifications" indicated specific dimensions for the storage tanks.

The total storage capacity of the Phase I facilities as planned and built is 880,000 gallons. The weak SWL output of the mill entering the Phase I pollution control facilities is 600 gallons per minute. Because five gallons of weak SWL is reduced by evaporation to one gallon of heavy SWL (red liquor) this storage capacity allows the shutdown of the Number 10 recovery boiler for some 39 hours while the mill continues full output of SWL. Exhibit A-7.

Because of slag accumulation Number 10 recovery boiler is scheduled for shutdowns of up to 96 hours every two or three months. Scott did not anticipate shutdowns of that kind for that duration at the time it selected Number 10 recovery boiler.

The DOE approved the applications 670 and 671 for the above storage and other pollution control facilities in 1972.

III

In 1973, Scott developed plans for marketing SWL under the trade

1 name of "TREX" for cattle feed and other uses. To that end it
2 installed, in 1975, two storage tanks of 1,000,000 gallons each which
3 could accept "neutralized" SWL and from which that SWL could either be
4 loaded onto rail cars for shipment as "TREX" or returned to NO. 10 recovery
5 boiler for burning as fuel. Without being neutralized, heavy SWL could
6 not be stored in these tanks, nor were they designed to be used for such
7 storage. These storage tanks were obtained and installed at a cost
8 approaching one million dollars.

9 During the years 1976 and 1977, the mill output of heavy SWL
10 totaled 70,000,000 gallons in each year. Of this approximately 5,000,000
11 gallons per year was diverted to the two 1,000,000 gallon storage
12 tanks and of that an average of 2,300,000 gallons per year (46%) was
13 sold as "TREX".

14 In October, 1978, Scott filed applications for a determination of
15 cost under RCW 82.34.060 toward the end of obtaining a tax credit for
16 the two 1,000,000 gallon storage tanks. The DOE disapproved those
17 applications from which Scott now appeals.

18 IV

19 Any Conclusion of Law which should be deemed a Finding of Fact
20 is hereby adopted as such.

21 From these Findings the Board comes to these

22 CONCLUSIONS OF LAW

23 I

24 Department of Ecology's approval, in 1972, of appellant's
25 applications 670 and 671 for tax credit and exemption under chapter 82.34
26 RCW did not include the two 1,000,000 gallon storage tanks at issue here.
27 These tanks are therefore not covered by a certificate authorizing such a

1 tax credit and exemption.

2 II

3 Appellant's 1978 application for a determination of cost under
4 RCW 82.34.060 includes these tanks not already covered by a certificate
5 and appellant therefore must obtain DOE's approval before it is entitled
6 to a certificate covering the tanks. DOE's approval requires a showing
7 by appellant of compliance with chapter 173-24 WAC as amended March 14,
8 1978.

9 III

10 Appellant must show under WAC 173-24-080, that its tanks are 1)
11 installed and operated for the primary purpose of pollution control and
12 2) that the tanks are suitable, reasonably adequate and meet the intent
13 and purposes of chapter 90.48 RCW, the State Water Pollution Control
14 Act.

15 Under WAC 173-24-100, a facility is operated primarily for the
16 purpose of pollution control when:

17 (1) The emissions or effluents from the
18 commercial or industrial operation do or will
19 contain measurably less pollution with the facility
20 installed than they would without the facility installed,
and;
. . . .

21 Under WAC 173-24-110, a facility is suitable, reasonably adequate
22 and meets the intent and purposes of chapter 90.48 RCW when:

23 ". . . operation will meet the requirements of
24 any applicable permits, orders, regulations or standards
of the department (DOE) . . .".

25 Tax credit and exemption statutes must be construed strictly.

26 Evergreen Washelli Memorial Park Co. v. Department of Revenue,

27 89 Wn.2d 660, 663, 574, P.2d 735 (1978). Further, the applicant has the

1 | burden of persuasion on appeal from DOE's disapproval of a facility for
2 | tax credit and exemption. Here, appellant has failed to demonstrate
3 | adequately that the tanks at issue are necessary elements in the SWL
4 | recovery system approved under its water pollution control permit.
5 | While an indeterminant part of the storage provided by the tanks may
6 | capture SWL during prolonged recovery boiler shutdowns for slag removal,
7 | such shutdowns were not shown to be within the limits of proper
8 | performance for that boiler. The two one million gallon tanks appear
9 | to be a redundant second layer of SWL receiving equipment which has
10 | been superimposed upon an adequate SWL recovery system for which tax
11 | credit and exemption has already been granted. With proper performance by
12 | the basic system, the effluent from the mill will not contain measurably
13 | less pollution with the tanks than without, nor are the tanks responsive
14 | to any applicable permit, order, regulation or standard of the DOE.

15 | We conclude that the tanks at issue were not installed or operated
16 | for the primary purpose of pollution control nor are they suitable to
17 | the purposes of chapter 90.48 RCW. Rather, the two one-million gallon
18 | tanks were installed and operated for the primary purpose of marketing
19 | "TREX".

20 | IV

21 | Any Finding of Fact which should be deemed a Conclusion of Law
22 | is hereby adopted as such.

23 | From these Conclusions the Board issues this

24 | ORDER

25 | The Department of Ecology's disapproval of the two tanks at issue
26 | for tax credit and exemption under chapter 92.34 RCW is hereby affirmed

27 | FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

DONE at Lacey, Washington, this 29th day of June, 1979.

POLLUTION CONTROL HEARINGS BOARD

David I. Mooney
DAVE I. MOONEY, Chairman

Chris Smith
CHRIS SMITH, Member

David Akana
DAVID AKANA, Member

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